

Lease Addendum

**U.S. Department of Housing
and Urban Development**
Office of Housing

OMB Approval No. 0000-0000
(exp. 00/00/00)

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INSTRUCTIONS FOR LEASEHOLD PROJECTS

These instructions and the following Lease Addendum have been prepared for use in connection with mortgage insurance for multifamily projects given pursuant to the National Housing Act found at 12 U.S.C. § 1701, *et seq.* (the “Act”). The lease term and other provisions must comply with the section of the Act under which the mortgage is insured. The lease provisions must not conflict with any regulations or directives promulgated by the Department of Housing and Urban Development (“HUD”) with respect to such mortgage insurance. All rent amounts must have prior written approval by HUD.

These instructions and the following addendum are based on the presumption that the lease will be a ground lease and all buildings, improvements and fixtures now or hereafter erected will be owned in fee simple by the Tenant and be deemed real estate under local law. The term “Property” shall be defined in the lease as the legally described land except the buildings and improvements now or hereafter located thereon. If the foregoing presumption is not correct the HUD closing attorney must be contacted for further instructions. The provisions of the following addendum must be set forth in the body of the lease or the addendum attached and incorporated by reference.

LEASE ADDENDUM

Notwithstanding any other provisions of this Lease, in the event of any conflict, inconsistency or ambiguity between the provisions of this Lease Addendum ("Addendum") and the provisions of any other part of this Lease, the provisions of this Addendum shall prevail and control. So long as the mortgage insured by the Secretary of the Department of Housing and Urban Development ("HUD"), with respect to FHA Project No. _____ known as (insert project name) _____ (hereafter the "Mortgage")

is in effect and not released; or there is any mortgage of this leasehold or of the buildings, improvements and fixtures now on or hereafter erected on the Property (hereafter the "Improvements") which mortgage is insured by or held by HUD; or in the event the ownership of the Improvements or this leasehold is acquired by HUD, then in any such event, the following provisions shall be and are in full force and effect:

- a) Tenant is authorized to obtain a loan, the repayment of which is to be insured by HUD and secured by a mortgage on this leasehold estate and the Improvements. Tenant is further authorized to execute all documents necessary as determined by HUD and otherwise to comply with the requirements of HUD for obtaining such an insured mortgage loan.

- b) In the event that HUD acquires title to this leasehold estate or otherwise acquires title to Tenant's interest herein, HUD shall have the option to purchase good and marketable fee simple title to the Property and Landlord's interest, if any, in the Improvements (the "Interest"), free of all liens and encumbrances except such as may be waived or accepted by HUD. Such option shall be exercised within twelve (12) months after HUD so acquires such leasehold estate or Tenant's interest. The purchase price shall be the sum of _____ Dollars (\$ _____) payable in cash, or by Treasury check, provided all rents are paid to date of transfer of title. HUD shall, within said twelve months, give written notice to Landlord of its election to exercise said option to purchase. Landlord shall, within thirty (30) days after HUD gives such notice, execute and deliver to HUD a warranty deed of conveyance to HUD as grantee conveying the said fee and Interest and containing a covenant against the grantor's acts, but excepting therefrom acts of the Tenant and those claiming by, through or under the Tenant. Nothing in this option shall require the Landlord to pay any taxes or assessments that were due and payable by the Tenant.

- c) If approved by HUD, the Tenant may convey, assign, transfer, lease, sublease or sell all or any part of its leasehold interest in the Property and its interest in the Improvements without the need for approval or consent by any other person or entity.

- d) (i) Insurance policies shall be in an amount, and in such company or companies and in such form, and against such risks and hazards, as shall be approved by the Lender of the Mortgage (hereinafter, "Lender," which term, when used herein, also

shall be deemed to have the meaning set forth in the HUD regulatory agreement applicable to this transaction) and HUD.

- (ii) The Landlord shall not take out separate insurance concurrent in form or contributing in the event of loss with that specifically required to be furnished by the Tenant to the Lender. The Landlord may at its own expense, however, take out separate insurance which is not concurrent in form or not contributing in the event of loss with that specifically required to be furnished by the Tenant to the Lender.
- e) (i) If all or any part of the Property or the Improvements or the leasehold estate shall be taken or damaged by condemnation, that portion of any award attributable to the Improvements or the Tenant's interest in the leasehold estate or damage to the Improvements or the Tenant's interest in the leasehold estate shall be paid to the Lender or otherwise disposed of as may be provided in the Mortgage. Any portion of the award attributable solely to the taking of the Property shall be paid to the Landlord. After the date of taking, the annual ground rent shall be reduced ratably by the proportion which the award paid to Landlord bears to the total value of the Property as established by the amount HUD is to pay, as set forth in paragraph (b) of this Addendum.
- (ii) In the event of a negotiated sale of all or a portion of the Property or the Improvements, in lieu of condemnation, the proceeds shall be distributed and annual ground rent reduced as provided in cases of condemnation, but the approval of HUD and Lender shall be required as to the amount and division of the payments to be received.
- f) Landlord may terminate the Lease prior to the expiration day of the full term of this lease ("Expiration Date") after a Tenant default under this lease ("Event of Default") but only under the following circumstances and procedures. If any Event of Default shall occur, then and in any such event, Landlord shall at any time thereafter during the continuance of such Event of Default and prior to any cure, give a written notice of such default(s) ("Notice of Default") to Tenant, the Lender and HUD, specifying the Event or Events of Default and the methods of cure, or declaring that an Event of Default is incurable. If the Event of Default is a failure to pay money, Landlord shall specify and itemize the amounts of such default. Failure to pay money shall be specified as a separate default and not combined with a non-monetary Event of Default. Within sixty (60) days from the date of giving the Notice of Default to Tenant, Tenant must cure a monetary default by paying Landlord all amounts specified in the Notice of Default and must cure any specified Event of Default that is capable of being cured within such period. During the period of 180 days commencing upon the date Notice of Default was given to the Lender and HUD, the Lender or HUD may: (a) cure any Event of Default; and (b) commence foreclosure proceedings or institute other state or federal procedures to enforce Lender's or HUD's rights with respect to the leasehold or Tenant Improvements ("Foreclosure"). If Tenant, Lender or HUD reasonably undertake to cure any Event of Default during the applicable cure period and diligently pursues such cure, Landlord shall grant such further reasonable time as is necessary to complete such cure. If HUD or Lender commences Foreclosure or other enforcement action within such 180 days, then its cure period shall be extended during the period of the Foreclosure or other

action and for 90 days after the ownership of Tenant's rights under the Lease is established in or assigned to HUD or such Lender or a Purchaser at any foreclosure sale pursuant to such Foreclosure or other action. The transfer of the Tenant's rights under the Lease to Lender, HUD or Purchaser, pursuant to such Foreclosure or other action shall be deemed a termination of any incurable Event of Default and such terminated Event of Default shall not give Landlord any right to terminate the Lease. Such Purchaser may cure curable Events of Default within said 90 days. If after the expiration of all of the foregoing cure periods, no cure or termination of an existing Event of Default has been achieved as aforesaid, then and in that event, this Lease shall terminate, and on such date the term of this Lease shall expire and terminate and all rights of Tenant under the Lease shall cease and the Improvements, subject to the Mortgage and the rights of Lender thereunder, shall be and become the property of Landlord. All costs and expenses incurred by or on behalf of Landlord (including, without limitation, reasonable attorneys' fees and expenses) occasioned by any default by Tenant under this Lease shall constitute Additional Rent hereunder. Landlord shall have no right to terminate this Lease except as provided in this paragraph (f).

- g) Upon termination of this Lease pursuant to paragraph (f) above, the Landlord shall immediately seek to obtain possession of the Property and Improvements. Upon acquiring such possession, the Landlord shall notify HUD and the Lender in writing. The Lender and HUD shall each have six (6) months from the date of receipt of such notice of acquisition to elect to take, as tenant, a new lease on the Property and on the Improvements. Such new lease shall have a term equal to the unexpired portion of the term of this Lease immediately prior to such termination and shall, except as otherwise provided herein, be on the same terms and conditions as contained in this lease, including without limitation, the option to purchase set forth under paragraph (b) above, except that Lender's or HUD's liability for ground rent shall not extend beyond their occupancy under such lease. The Landlord shall tender such new lease to the Lender or HUD within thirty (30) days after a request for such lease and shall deliver possession of the Property and Improvements immediately upon execution of the new lease. Upon executing a new lease, the Lender or HUD shall pay to Landlord any unpaid ground rent due or that would have become due under this Lease to the date of the execution of the new lease, including any taxes which were liens on the Property or the Improvements and which were paid by Landlord, less any net rentals or other income which Landlord may have received on account of the Property and Improvements since the date of default under this Lease.
- h) The Landlord agrees that within ten (10) days after receipt of written request from Tenant, it will join in any and all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work which the Tenant may do hereunder and will also join in any grants for easements for electric telephone, telecommunications, cable, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary in the operation of the property or of any Improvements and if, at the expiration of such ten (10) day period, the Landlord shall not have joined in any such application, or grants for easements, the Tenant shall have the right to execute such application and grants in the name of the Landlord, and for that purpose, the

Landlord hereby irrevocably appoints the Tenant as its Attorney-in-fact to execute such papers on behalf of the Landlord.

- i) Nothing in this Lease contained shall require the Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the Landlord or any income excess profits or revenue tax, or any other tax, assessment charge or levy upon the rent payable by the Tenant under this lease.
- j) All notices, demands and requests which are required to be given by the Landlord, the Tenant, the Lender or HUD shall be in writing and shall be sent by registered or certified mail, postage prepaid, and addressed to the address of the party as given in this instrument unless a request for a change in this address has been sent to the party giving the notice by registered or certified mail prior to the time when such notice is given.

All notices to Lender or HUD shall be as follows:

If to Lender:

If to HUD: :

- k) This lease shall not be modified without the written consent of HUD and the Lender.
- l) The provisions of this Addendum benefit the Lender and HUD and are specifically declared to be enforceable against the parties to this lease and all other persons by the Lender and HUD.